

NO. 29536

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
COLSON LINDBERG PALANI CHING, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(HPD Traffic No. 1DTA-08-07935)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Watanabe and Fujise, JJ.)

Defendant-Appellant Colson Lindberg Palani Ching (Ching) appeals the Judgment, entered on November 28, 2008, in the District Court of the First Circuit, Honolulu Division (district court).¹

Ching was convicted of Operating a Vehicle Under the Influence of an Intoxicant (OUVII), in violation of Hawaii Revised Statutes § 291E-61(a) (Supp. 2008).

On appeal, Ching contends the written complaint and oral charge were insufficient because they failed to state an essential element of the charge, i.e., that Ching operated or assumed actual physical control of a vehicle upon a public way, street, road, or highway.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Ching's point of error as follows:

Prior to trial, Ching moved to dismiss the charge because it failed to allege all the essential elements of the OVUIII offense. The district court denied Ching's motion. "[T]he operation of a vehicle on a public way, street, road, or highway is an attendant circumstance of the offense of OUVII, and is

¹ The Honorable William A. Cardwell presided.

therefore an element of the offense." State v. Wheeler, No. 29149, 2009 WL 3837633, at *8 (Haw. November 17, 2009). The failure to allege that Ching was driving a vehicle upon a public way, street, road, or highway at the time of the offense rendered the charge deficient. Id.

Therefore,

IT IS HEREBY ORDERED THAT the November 28, 2008 Judgment of the District Court of the First Circuit, Honolulu Division is vacated and the matter is remanded to the district court with instructions to dismiss without prejudice.

DATED: Honolulu, Hawai'i, December 23, 2009.

On the briefs:

James S. Tabe,
Deputy Public Defender,
for Defendant-Appellant.

Chief Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge